In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 119

LOUISE M. WISSNER AND LEANDOUS H. WISSNER,
APPELLANTS

v.

MARGARET WISSNER

APPEAL FROM THE DISTRICT COURT OF APPEAL, STATE OF CALIFORNIA, THIRD APPELLATE DISTRICT

MEMORANDUM ON BEHALF OF THE UNITED STATES AS AMICUS CURIAE

This memorandum is submitted by the United States as amicus curiae in support of appellant's right to review, by this Court, of the decision of the District Court of Appeal, State of California, Third Appellate District, in the case at bar. As we read its opinion, the court below has ruled against the validity of a federal statute concerning veterans' benefits; or, at the least, it has decided an important question of federal law in a way that is untenable and conflicts with the interpretation which the Veterans Administration and the lower

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federal courts have placed upon the statute. The opinion of the court below (R. 70-84) is reported at 89 Adv. Cal. App. 857, 201 P. 2d 837. The California Supreme Court denied a hearing without opinion (R. 37), so that the decision of the District Court of Appeals is the decision of the highest state court in which review could be had.

The question in the case is whether benefits paid to a beneficiary of a National Service Life Insurance policy are subject to attachment, levy or seizure under legal or equitable process, at the instance of the widow of the insured claiming one-half of the benefits as her share of community property under state law, notwithstanding Section 3 of the Act of August 12, 1935, as amended (49 Stat. 609; 38 U. S. C. 454a). That section provides that: "Payments of benefits * * * to * * * a beneficiary under any of the laws relating to veterans shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary." [1]

The insured in the instant case was Dr. Leonard O. Wissner, who at the time of his death in India was a major in the United States Army. Dr. Wissner took out a National Service Life Insurance policy, and pursuant to Section 602(g) of the

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[1] This provision was specifically made applicable to National Service Life Insurance by Section 616 of the National Service Life Insurance Act of Oct. 8, 1940, 54 Stat. 1014, 38 U.S.C. 816.

National Service Life Insurance Act (54 Stat. 1010, 38 U. S. C. § 802(g)), which authorizes an insured to designate one or more beneficiaries within certain classes, including the parents of the insured, designated his mother, Louise M. Wissner, the appellant herein, as principal beneficiary, and his father as contingent beneficiary. Pursuant to Section 608 (54 Stat. 1012, 38 U. S. C. 808), which empowers the Veterans Administration to administer the Act and to pay the benefits to the properly designated beneficiary, the Veterans Administration has been paying the appellant, Louise M. Wissner, the monthly sum of $76.70.[2] The appellee, widow of the insured, brought suit in the state court against the beneficiary for one-half of these insurance payments, claiming this amount as the widow's share of the community property under California law. Appellant defended on the ground that these benefits were immune from suit by virtue of Section 3 of the Act of August 12, 1935, as amended, *supra*, and the scheme of benefits under the National Service Life Insurance Act which it undoubtedly was designed to protect. But this defense has been rejected by the court below which affirmed a judgment for the appellee for one-half

[2] The Veterans Administration has pursued the consistent policy that benefits under the National Service Life Insurance Act, are protected by Section 3 of the Act of August 12, 1935, as amended, *supra*, and are the exclusive creature of federal law, and no person can claim any right or interest in such benefits, before or after payment to the beneficiary, except by virtue of the statutory scheme.

of the insurance benefits, holding that if Section 3 of the Act of 1935, as amended, were construed to prevent judgment for the appellee, the statute would be unconstitutional as a taking, without due process of law, of the widow's share of community property, vested in her by state law (R. 77-80). The court offered no possible interpretation of the statute which would preserve it from what it held to be its constitutional infirmities. We think it clear that the terms of the act squarely prohibit allowance of appellee's claim.

The case is thus one in which the validity of a statute of the United States has been drawn in question by the appellee, and the decision of the state court is against its validity. It is also one in which an immunity has been specially claimed by the appellant under a statute of the United States and the claimed immunity has been denied by the highest state court in which a decision could be had. The case is therefore one properly before this Court, either as an appeal under 28 U. S. C. 1257(1) or, at the very least, by certiorari under 1257(3).

The question in the case has not been decided by any other highest state court or by any federal court of appeals, but there are numerous lower court decisions, including decisions in the United States District Court in California, in conflict with the decision in this case. The question is one of great importance to the United States and to a numerous class of persons comprising, as it does, a

large portion of the possible beneficiaries of soldiers' insurance in community property states.

Although the United States was not a party to the proceedings in the state court, it has a definitive interest in this appeal. A decision by this Court will determine finally the extent of protection afforded beneficiaries under the federal National Service Life Insurance statute by Section 3 of the Act of August 12, 1935, *supra*. The fact that the form of this suit is one between the designated beneficiary and a claimant, to which the United States is not a party, does not alter the substance of its attack upon the Congressional scheme for National Service Life Insurance. The Veterans Administration has consistently refused to make payment directly to persons in the class of the appellee herein as against the designated beneficiaries, and it is therefore interested in preventing payment to such persons by indirection. (See *United States* v. *Snyder*, App. D. C. No. 9848, decided July 5, 1949.) Accordingly, because of the importance of the question presented, involving the interpretation and validity of a federal statute, we urge that probable jurisdiction of the appeal be noted or that a writ of certiorari be granted.

Respectfully submitted,

PHILIP B. PERLMAN,
Solicitor General.

OCTOBER, 1949.

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BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

OPINIONS BELOW

The Superior Court of the State of California in and for the County of Stanislaus wrote no opinion. The opinion of the District Court of Appeal, Third Appellate District, State of California (R. 17-29), is reported at 89 Cal. App. 2d 759.

JURISDICTION

The judgment of the District Court of Appeal, Third Appellate District, was entered January 21, 1949 (R. 17). A petition for rehearing was denied

February 11, 1949 (R. 29). The Supreme Court of California denied a hearing on March 21, 1949 (R. 30). The District Court of Appeal, on May 16, 1949, allowed an appeal to this Court (R. 33). This Court noted probable jurisdiction on October 10, 1949 (R. 36). Jurisdiction of this Court rests upon 28 U. S. C. 1257(1).

QUESTIONS PRESENTED

1. Whether the community property laws of California can be effective to furnish a basis for a claim by a serviceman's widow for an amount equal to one-half of the proceeds of the serviceman's National Service Life Insurance policy in which he had designated his parents as beneficiaries.

2. If the first question is answered in the affirmative, whether the Act of August 12, 1935, which is incorporated by reference into the 1940 Act and which exempts veterans' insurance policy proceeds from all judicial process, violates the widow's constitutional rights if it is invoked by the parents so as to prevent her from satisfying a judgment on her claim directly out of the proceeds of the policy.

STATUTE INVOLVED

The pertinent provisions of the National Service Life Insurance Act of 1940, and of the Act of August 12, 1935,[1] which is incorporated by refer-

[1] The National Service Life Insurance Act of 1940 will be referred to as the "1940 Act" or the "N.S.L.I. Act." The Act of August 12, 1935, will be identified as the "1935 Act", even though, for all purposes here pertinent, it is incorporated by reference into the 1940 Act.

ence into the 1940 Act, are set forth in Appendix A, *infra*, pp. 55-60.

STATEMENT

The instant case involves an action brought by appellee, the widow of Major Leonard O. Wissner, against the Major's mother and father in order to recover one-half of the "paid and to be paid" proceeds of a National Service Life Insurance policy (hereinafter, "N.S.L.I. policy") in which the mother was named as the principal beneficiary and the father the contingent beneficiary.[2]

The pertinent facts may be summarized as follows:

Wissner married appellee in California in 1930 (R. 11). He entered the Army on November 9, 1942, and took out a $10,000 N.S.L.I. policy (R. 5, 13). Pursuant to Section 602(g) of the 1940 Act (Appendix A, *infra*, p. 55), which authorizes the insured to designate one or more beneficiaries within certain classes, he designated his mother, Louise M. Wissner, as principal beneficiary, and his father, Leandous H. Wissner, as contingent beneficiary (R. 13). The premiums for this policy were paid

[2] The parents have raised no question here concerning the widow's right to one-half of the value of an automobile and other personal property given to them by the deceased officer. See R. 2, 11-12. The issues before this Court relate only to the widow's claim to one-half of the proceeds of the National Service Life Insurance policy. As stated by the District Court of Appeal, an appeal to this Court was sought and allowed only with respect to that portion of its judgment "which affects the rights of the appellants [*i.e.*, the parents] to retain the proceeds of a National Service Life Insurance policy, paid and to be paid". (R. 33.)

by Major Wissner out of his Army pay and the policy was in full force and effect on November 14, 1945, when he died (R. 3, 8, 13).

Thereafter, the insured's mother, as designated principal beneficiary of the policy, filed her claim in the Veterans Administration for the benefits under the insurance contract. A community property claim to one-half of those benefits was also filed with the Veterans Administration on behalf of the widow. (Appendix B, *infra*, pp. 68-69). Upon consideration of these claims for the proceeds of the insured's policy, the Veterans Administration, in accordance with Section 608 of the 1940 Act (Appendix A, *infra*, p. 59), which authorizes the payment of insurance benefits to the properly designated beneficiary, rejected the widow's claim and directed that the payment of the entire proceeds be made to the insured's mother (R. 9; Appendix B, *infra*, pp. 70-71). The Veterans Administration has accordingly been paying the designated beneficiary the monthly sum of $76.70, commencing as of November 14, 1945 (R. 9).[3]

[3] This monthly payment will be made by the Veterans Administration to the insured's mother for the rest of her life. (These payments consider the fact that she was 65 years old at the time of the death of the insured and are also based on the American Experience Table of Mortality and a 3% interest rate, 38 C.F.R. (Cum. Supp.) sec. 10.3450(b)). If she should die before receiving 120 monthly payments, the balance of those payments would go to the contingent beneficiary designated by the insured. If both the principal and contingent beneficiaries die before the end of the ten-year period, the entire remainder of the 120 payments would, under the N.S.L.I. Act and the policy, be paid to appellee, the widow of the insured. Section 602 (h) (3); 38 C.F.R. (Cum. Supp.) sec. 10.3448(a).

Subsequent to the rejection of her claim by the Veterans Administration, the widow, on March 15, 1947, claiming the same community property right to one-half of the paid and future monthly payments made by the Veterans Administration under the policy, instituted this proceeding by filing a complaint in the Superior Court of California in and for the County of Stanislaus (R. 1, 4, 6-7). The complaint named the insured's mother and father as defendants (R. 1); it did not join the United States, the Veterans Administration, nor any other governmental agency or officer as defendant. The complaint alleged generally that the insured and appellee were husband and wife up until his death (R. 1); that the insured died while stationed with the Army in India on November 14, 1945, thus leaving the appellee as his surviving widow (R. 1, 5); that all of the property possessed by the insured at the time of his death was community property (R. 1); that the insured had taken out a $10,000 National Service Life Insurance policy (R. 3); that the policy was in full force and effect at the time of his death (R. 3); that the premiums on the policy were paid from out of the earnings of the insured and that these earnings were the community property of the insured and appellee (R. 3).

Further allegations in the complaint admitted the designation in the policy of the insured's mother as the principal beneficiary and of his father as contingent beneficiary (R. 3). However, the complaint included an averment that appellee "never

at any time had knowledge" that the insured had named anyone other than herself as beneficiary, and that she never consented to the use of community funds for the payment of premiums on a policy of insurance naming the mother and father as beneficiaries (R. 3-4). The complaint also alleged that the designated principal beneficiary has received "as proceeds of said policy the sum of $76.70 per month, commencing as of November 14, 1945" and that one-half of these proceeds, together with 7% interest thereon, was "received for the use and benefit of the plaintiff" (R. 4). The complaint then prayed for judgment for one-half of each of the $76.70 monthly payments received by the principal beneficiary from the Veterans Administration through September, 1947,[4] together with 7% interest from the date of receipt of each monthly payment (R. 4, 6, 9). As to future payments to be made to the designated beneficiary by the Veterans Administration, the complaint prayed that the court order the defendants "to pay and deliver to plaintiff herein one-half of all moneys hereafter received from the proceeds of the said insurance policy immediately upon the receipt thereof by the said defendants or either thereof" (R. 6-7).

On April 21, 1947, the insured's mother and father filed an answer alleging that the premiums

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[4] Although filed on March 15, 1947, the complaint was amended in the course of trial to ask for judgment for one-half of the payments made to the principal beneficiary by the Veterans Administration through September, 1947.

on the policy "were paid by deduction from the pay of the said Leonard O. Wissner as an officer in the United States Army" (R. 8); that, at all times, they were the designated beneficiaries of that policy (R. 8); and that "a soldier in the Army of the United States of America has the legal right to designate the beneficiary in any National Service Life Insurance policy issued on his life, and that the designation of the defendants herein as beneficiaries in said policy is final and conclusive as against any claimed rights of the plaintiff" (R. 9).

After the trial, the Superior Court of Stanislaus County made findings in accord with the allegations of the complaint (R. 13, 14). The court concluded that the widow was entitled to "½ of the entire proceeds of said insurance policy when and as the same are paid" to the designated beneficiary, and entered judgment in favor of the widow for one-half of all the monthly payments received by the mother from November 14, 1945, through September, 1947, together with 7% interest per annum on one-half of each monthly payment from the date of its payment to the mother, up to the date of the judgment, January 2, 1948 (R. 16). With respect to the monthly payments received for October, 1947, and thereafter, the judgment required the insured's mother and father to pay to the widow one-half of all such future monthly payments "immediately upon the receipt thereof by said defendants or either thereof" (R. 16). The judgment also allowed appellee 7% interest on one-half of any

future monthly payment not paid to her within 5 days after receipt of the payment by the designated beneficiary.

The District Court of Appeal, Third Appellate District, affirmed the lower court's judgment on January 21, 1949 (R. 17, 29). It held that the California law concerning policies issued by private insurance companies makes it clear that "where insurance on a husband's life was bought and paid for with community funds, the husband could give away no more than one-half of the proceeds without the written consent of the wife" (R. 21). Reasoning that a failure to apply the same rule to the proceeds of a N.S.L.I. policy would contravene the Fifth Amendment by divesting plaintiff of her vested community property rights, the court announced its refusal to be bound by the provisions of the federal statute under which the policy here involved was issued (R. 23, 25, 28). A petition for rehearing was denied by the court on February 11, 1949 (R. 29). The Supreme Court of California also denied a hearing, with Judge Schauer dissenting (R. 30).

INTEREST OF THE UNITED STATES

The critical interest of the United States in the instant case is twofold. First, it is concerned with the holding of the court below that the 1935 Act (*infra*, pp. 44-45, 60), exempting benefits paid or payable to beneficiaries from "attachment, levy, or seizure by or under any legal or equitable process

whatever", is unconstitutional. That statute is incorporated in the 1940 Act (Section 616, Appendix A, *infra*, pp. 59-60) and forms part of the terms of the insurance policy here involved. *United States* v. *Zazove*, 334 U. S. 602; *White* v. *United States*, 270 U. S. 175, 180-181; *Lynch* v. *United States*, 292 U. S. 571, 577.

Secondly, the government is vitally interested in preserving the heart of the 1940 Act, which is the right it accords a serviceman to designate his beneficiary (within a restricted class) and its requirement that the insurance proceeds shall be payable to and enjoyed by such beneficiary. Section 602 (g),[5] (h), Appendix A, *infra*, pp. 55-57. Under Section 608 (Appendix A, *infra*, p. 59), the Veterans Administration is charged with the duty not only of paying the proceeds of matured policies, but to pay those proceeds only as directed by the insured. The decision of the court below in applying the California community property law so as to require one-half of the proceeds of the policy to be turned over to someone other than the designated beneficiary, in contravention of the 1940 Act, deprives the latter of benefits which the insured intended the beneficiary alone to enjoy. Moreover, the decision below, by frustrating the insured's intent on

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[5] By the Act of August 1, 1946, 60 Stat. 781, a proviso was added to Section 602(g) whereby the restrictions of the Section as to the permitted class of beneficiaries were made inapplicable to National Service policies maturing on or after August 1, 1946. This proviso added by the Act of August 1, 1946, is not involved in this case. See fn. 23, *infra*, p. 55.

the basis of purely local law, thwarts the deliberate purpose of Congress to establish a national and uniform system of life insurance for the members of the armed forces, and unduly complicates the administration of the National Service Life Insurance system.

The interest of the United States is in no way lessened by the fact that it was not made a formal party to the proceeding nor by the fact that the decision below does not result in a diversion of the insurance policy proceeds until after they have been paid by the Veterans Administration to the designated beneficiary. Whether the proceeds are diverted by a court order before or after receipt thereof by the designated beneficiary, is, in the light of the 1940 and 1935 Acts, immaterial. In both instances, the significant facts are that the insured's right under the 1940 Act to designate a beneficiary, the system of distribution established by that Act, and the beneficiary's statutory right to retain the proceeds, are being violated.

SUMMARY OF ARGUMENT

As a matter of California law, it seems to be clear that a widow in that state has a community property right to one-half of the proceeds of an ordinary insurance policy taken out by her husband on his life in favor of some third party beneficiary and paid for with community funds.

Appellee contends, first, that, in similar circumstances, she has an identical right to one-half of the proceeds of a N.S.L.I. policy issued by the United States under the 1940 Act although the insured, her husband, had not designated her as even a partial beneficiary. Her second principal argument, which assumes the correctness of her initial contention, is that the 1935 Act's immunization of N.S.L.I. proceeds from legal process cannot validly prevent her from satisfying a community property judgment for an amount equal to one-half of the proceeds of the N.S.L.I. policy out of the proceeds themselves.

In Points I and II we discuss each of those contentions, respectively. Point I shows that a state statute cannot create a community property interest in a N.S.L.I. policy because the 1940 Act, under which the United States issues those policies, leaves no room for the application of state community property laws.

I

A. The main reason for foreclosing application of the California community property law is the Supremacy Clause of the Constitution. Wherever a conflict exists between a valid federal statute and a state statute, the Supremacy Clause requires "the Judges in every State" to be bound by the federal law and to reject the state law. There is no doubt in the instant case that the 1940

Act is valid and that it clashes directly with the California community property law.

1. The validity of the 1940 Act rests on the ample national defense and war powers conferred on Congress by the Constitution. Those powers make the 1940 Act, as a whole, immune from constitutional attack. Those powers also sustain the validity of such provisions of the 1940 Act as Sections 602(g) and (h) which give the insured the right to designate a beneficiary and require the policy's proceeds to be paid to that beneficiary. As observed in *Pack* v. *United States*, 176 F. 2d 770, 771 (C.A. 9), the 1940 Act imposes "the mandate that the proceeds may be paid *only* to the person designated in the policy as beneficiary. * * * We see no constitutional limitation on the power of Congress to make provision as to the manner in which the Government shall contract with holders of National Service Life Insurance."

2. The collision between the 1940 Act and the state community property law relied on by the court below is shown by the fact that specific provisions of the 1940 Act would be nullified if the state law is allowed to apply and create community property interests in N.S.L.I. policies.

(a) Sections 602(g) and (h), as noted above, require payment of the proceeds to the beneficiary selected and designated by the insured. The courts have been especially vigilant in effectuating the insured's intent that the proceeds be paid to

the beneficiary named by him. Here, the deceased could have named appellee the beneficiary. However he deliberately named his mother instead. Under Sections 602(g) and (h) the mother alone is entitled to the proceeds.

Under the community property statutes of California, as applied by the court below, the mother is entitled to only one-half of the proceeds and the other one-half goes to appellee. This result frustrates the insured's express intent not to have appellee share in the proceeds. At the same time it reads out of the 1940 Act its most important provision—that directing payment only to the designated beneficiary.

(b) Section 602(i) of the 1940 Act would also be made meaningless if community property interests in N.S.L.I. policies were recognized. That section declares that "no person shall have a vested right" to any insurance proceeds. The California law, however, recognizes that at the time of the insured's death there vests a community property right to one-half of the proceeds. This result is at war with Section 602(i) and puts appellee in a more preferred position than she would have been in had the insured actually named her as the beneficiary.

(c) Similarly, if appellee is regarded as having a vested right to one-half of the proceeds as of the insured's death, it is obvious that upon her death any unpaid installments would go to her

heirs or legal representatives, in violation of the express prohibition contained in Section 602(j) of the Act.

(d) Under the 1940 Act the decisions of the Administrator of Veterans' Affairs on questions arising under N.S.L.I. policies are conclusive unless overturned in federal courts. Here, appellee's administrative claim was rejected by the Veterans Administration. Despite the provisions of the 1940 Act, appellee, on the basis of the state community property law, obtained a reversal of the administrative decision in a state court.

3. (a) The comprehensive and detailed nature of the 1940 Act, together with the need for its uniform administration on a national basis, further emphasize the conflict of its provisions with those of the California law.

(b) A consistent administrative interpretation, dating back to at least 1920, confirms the view that the conflict can be avoided only by foreclosing application of the state statute and thus preventing the creation of community property rights in N.S.L.I. policies.

4. Since the 1940 Act clashes with the California community property law in many respects, and since the 1940 Act is fully within congressional power, the Constitution requires that the state law be held inapplicable. Any other holding would nullify the Supremacy Clause and allow

appellee to achieve in a state court a result which all of the federal courts have rejected as forbidden by the 1940 Act.

B. Apart from the Supremacy Clause, there is no room for doubt that a N.S.L.I. policy, being a federal contract founded on a federal statute, must be interpreted in the light of federal law.

This Court, with respect to government contracts in general, has regularly applied federal law, rather than state law. There is no justification for applying state law to N.S.L.I. policies, which create recognized contractual obligations between the Government and the insured. In fact, since the insured is a member of the armed forces, the need for applying federal law is even greater than in the ordinary government contract situation. *United States* v. *Standard Oil Co. of California*, 332 U. S. 301, 305-306.

II

Even if we were to assume that the California law may be applied here so as to create a community property interest in the N.S.L.I. policy, the judgment below is nevertheless in error, because, in contravention of the provisions of the 1935 Act, it subjects the N.S.L.I. proceeds themselves to legal process and directs that the community property claim be satisfied out of such proceeds. That error is in no way mitigated by the fact that the proceeds at which the judgment

is directed have been paid out by the Veterans Administration and are in the hands of the designated beneficiary.

A. The 1940 Act incorporates by reference the provisions of the 1935 Act. The latter Act expressly frees N.S.L.I. proceeds from "any legal or equitable process whatever, either before or after receipt by the beneficiary."

This Court's previous observation that the 1935 Act was largely designed to protect the beneficiary *after* he received the payments from the Government, (*Lawrence* v. *Shaw*, 300 U. S. 245, 249; see *Carrier* v. *Bryant*, 306 U. S. 545, 547) finds strong support in the 1935 Act's legislative history. Thus, the terms of the 1935 Act, and judicial and congressional recognition of its purpose, completely undermine appellee's contention that the federal statutory immunity ceases upon payment of the insurance proceeds to the designated beneficiary. It is equally clear that the judgment below, which acts directly on the past and future proceeds by requiring the beneficiary to turn one-half of them over to appellee, is invalid.

B. The 1935 Act, in exempting N.S.L.I. proceeds from judicial process after they have been received by the designated beneficiary from the Veterans Administration, does not deprive appellee of any vested rights without due process of law.

1. The 1940 Act, and the 1935 Act which it incorporated, were enacted long before any of ap-

pellee's rights allegedly "vested" under California law. The community property rights she claims could not, therefore, have been improperly "divested" by either of those Acts. Moreover, the 1940 Act specifically provided that no person shall have "a vested right" to the proceeds of a N.S.L.I. policy.

2. In any event, it has always been recognized that the destruction of a right, even if vested, does not in itself render a statute invalid on substantive due process grounds. Where the federal statute is based on some paramount federal power, the legislation has been upheld, if the means are reasonable to accomplish the permitted goal, even though it may set aside vested rights.

No federal court, nor any state court, other than the court below, has cast doubt on the constitutionality of the 1935 Act. This Court, in *Lawrence* v. *Shaw*, 300 U. S. 245, examined the 1935 Act and held that its exemption protects federal payments after their receipt by the beneficiary, not only while they are in his hands, but also while they are on deposit in his checking account. The *Shaw* case does not discuss the constitutionality of the 1935 Act. It assumes it. See *Culp* v. *Webster*, 25 Col. App. (Sup.) 2d 759.

ARGUMENT

I

Community Property Interests under State Statutes Cannot Exist in Policies Issued under the National Service Life Insurance Act of 1940

At the outset, and in an order to bring the problem into proper focus, we shall assume *arguendo* that, under California law, an ordinary insurance policy, taken out by a married soldier and paid for out of his service pay, is not his separate property but constitutes community property.[5a] On that assumption, the California community property law appears to require the payment to the deceased soldier's widow of one-half of the proceeds of any such policy, issued by a private insurance company, even though the insured designated someone else as the beneficiary.[6] Appellee contends that the California law affects the distribution of the proceeds of a N.S.L.I. policy issued by the United States just as it does that of any private policy. She urges, therefore, that a widow in California has (1) a community property right to a judgment for an amount equal to one-half of the proceeds of a N.S.L.I. policy, and (2) a right to have that judgment satisfied out of those proceeds.

[5a] But see fn. 19, *infra*, p. 43.

[6] *New York Life Insurance Co.* v. *Bank of Italy*, 60 Cal. App. 602, 607; *Modern Woodmen of America* v. *Gray*, 113 Cal. App. 729; *Mazman* v. *Brown*, 12 Cal. App. 2d 272; *Union Mutual Life Ins. Co.* v. *Broderick*, 196 Cal. 497; *Blethen* v. *Pacific Mutual Life Ins. Co.*, 198 Cal. 91, 98; *Travelers Ins. Co.* v. *Fancher*, 219 Cal. 351.

despite the provision of the 1935 Act. Appellants and the United States, on the contrary, take the position that (1) the 1940 Act precludes the application of the California community property law to government soldier's insurance, and thus renders impossible the existence of any community property interest in N.S.L.I. policies, and that (2) even if such a community property interest does exist, a judgment awarding such an interest to the widow cannot, because of the provisions of the 1935 Act, be satisfied out of the proceeds directly, but may be satisfied, if at all, only out of other assets owned by the designated beneficiary. Our Point I discusses the first phase of the case. We show that the 1940 Act leaves no room for the application of the California community property law, and that that law cannot therefore create any interest in N.S.L.I. policies.[7]

A. *Where state law conflicts with a valid federal law, as it does here, the "Supremacy Clause" requires application of the federal law*

Although the federal government is one of enumerated powers, Article 6, Clause 2 of the Constitution makes those powers supreme over any conflicting state laws. *Testa* v. *Katt*, 330 U. S. 386; see *Ex Parte Siebold*, 100 U. S. 371, 392; *Claflin*

[7] In Point II, we shall assume the existence of a community property interest in N.S.L.I. policies and show that, because of the provisions of the 1935 Act, a judgment awarding such an interest may not be satisfied out of the insurance proceeds themselves.

v. *Houseman*, 93 U. S. 130. The Clause unambiguously provides that:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof * * * shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The manifest purpose of the Supremacy Clause is to remove all state obstacles to the performance by the Federal Government of any of its functions and so modifies "every power vested in subordinate governments, as to exempt its own operations from their own influence." *McCulloch* v. *Maryland*, 4 Wheat. 316, 427. A federal statute, unless unconstitutional, cannot be challenged as inconsistent with state law. This freedom from conflicting state regulation, announced in many decisions of this Court,[8] is coextensive with the scope of federal

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[8] As this Court remarked in *United States* v. *Belmont*, 301 U. S. 324, 331-332:

> * * * Within the field of its powers, whatever the United States rightfully undertakes, it necessarily has warrant to consummate. And when judicial authority is invoked in aid of such consummation, state constitutions, state laws, and state policies are irrelevant to the inquiry and decision. It is inconceivable that any of them can be interposed as an obstacle to the effective operation of a federal constitutional power. * * *

This principle precludes the states from interference with the property, operations, or functions of the United States. Because the United States "may perform its functions without conforming to the police regulations of a State," it may con-

power, for every authorized activity of the United States is an exercise of its governmental power. *Graves* v. *N. Y. el rel O'Keefe*, 306 U. S. 466, 477; *Pittman* v. *Home Owners' Corp.*, 308 U. S. 21, 32; *Federal Land Bank* v. *Bismarck Lumber Co.*, 314 U. S. 95, 102.

The court below, ignoring these fundamental principles, rejected the applicable federal law, and applied instead the conflicting provisions of state law, *i.e.* the California community property law. Review of the constitutional basis of the 1940 Act, its controlling provisions, and those of the state law invoked by the court below, underscores the

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struct a dam and reservoir in a state without securing approval of its plans and specifications by the state engineer as required by state statute (*Arizona* v. *California*, 283 U. S. 423, 451); and it may operate soldiers' homes without complying with state inspection or police regulations (*Ohio* v. *Thomas*, 173 U. S. 276). So, too, the driver of a mail truck for the Post Office Department cannot be required to comply with state driving license requirements (*Johnson* v. *Maryland*, 254 U. S. 51), nor may federal agents in a national forest and game preserve be subject to the hunting restrictions of the state in which the preserve is located (*Hunt* v. *United States*, 278 U. S. 96). The United States may enforce a lien for taxes upon real estate under the internal revenue laws without complying with state law requiring recordation and timely enforcement (*United States* v. *Snyder*, 149 U. S. 210); and a claim of the Government against a decedent's estate will not be barred by failure to file within the time required by state law. *United States* v. *Summerlin*, 310 U. S. 414. The United States may distrib. fertilizer to consumers in Florida without complying with a state inspection act. *Mayo* v. *United States*, 319 U. S. 441. See, also *Osborn* v. *United States Bank*, 9 Wheat. 738; *Thomson* v. *Pacific Railroad*, 9 Wall. 579, 590-591; *Tennessee* v. *Davis*, 100 U. S. 257, 263; *In re Neagle*, 135 U. S. 1; *McCune* v. *Essig*, 199 U. S. 382; *Penn Dairies, Inc.* v. *Milk Control Commission of Pennsylvania*, 318 U. S. 261; *Ruddy* v. *Rossi*, 248 U. S. 104; *United States* v. *San Francisco*, 310 U. S. 16.

conflict between the federal and state statutory provisions and emphasizes the need for compliance with the mandate of the Supremacy Clause.

1. Appellee does not doubt the constitutional power of Congress to provide by statute a system of life insurance for the members of the armed forces (Appellee's Statement Opposing Jurisdiction and Motion to Dismiss or Affirm, p. 5). Ample basis for the enactment may be found in the national defense and war powers conferred by the Constitution. Article I, Section 8, grants Congress the following express powers:

> (a) To * * * provide for the common Defence and general Welfare of the United States * * *.
>
> (b) To declare War * * *.
>
> (c) To raise and support Armies * * *.
>
> (d) To provide and maintain a Navy * * *.
>
> (e) To provide for calling forth the Militia.

In addition, the Preamble emphasizes the establishment of the Constitution so as to "provide for the common defence."

Any one of these clauses would sustain the legislation. Their combination in the Constitution explains why the 1940 Act, as well as the previous forms of government servicemen's insurance on which it was modelled—the Act of October 6, 1917, 40 Stat. 398, 409, 410 (war risk insurance) and the

World War Veterans Act of 1924, 43 Stat. 607, 624 (United States Government Life Insurance)[9] —have been immune from constitutional attack. It also accounts for the fact that statutory provisions deemed by Congress reasonably necessary to effectuate the purposes of the 1940 Act, such as Sections 602(g) and (h), giving the insured the right to designate his beneficiary and requiring the proceeds to be paid to that beneficiary, have never been, and are not here, assailed as lacking constitutional basis. "Thus, the contract of insurance issued by the Government has certain restrictions and limitations placed thereon by Congress, among which is the mandate that the proceeds may be paid *only* to the person designated in the policy as beneficiary. * * * We see no constitutional limitation on the power of Congress to make provision as to the manner in which the Government shall contract with holders of National Service Life Insurance." *Pack* v. *United States*, 176 F. 2d 770, 771 (C.A. 9). By the same token, there is no reason why Congress could not constitutionally provide expressly, or implicitly, as we show below was done by the provisions of the 1940 Act, that state laws shall be inoperative to create community property interests in N.S.L.I. policies.

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[9] Senator Harrison, in charge of the bill which became the N.S.L.I. Act, pointed out: "This [national service life] insurance is similar to war-risk insurance with certain modifications based on experience gained over the past 20 years. * * * There is not much difference between the two." (86 Cong. Rec. 12920).

2. Since the provisions of the 1940 Act are valid, the Supremacy Clause requires adherence to those provisions whenever they collide with state law. That such a conflict exists here is evidenced by comparison of the federal statutory provisions and the state law relied on by the court below. Specific provisions of the 1940 Act would be nullified by forcing application of the state laws so as to create community property interests in N.S.L.I. policies or proceeds.

(a) We start with the critical terms of the 1940 Act. They reflect a deliberate congressional purpose to require the proceeds of a N.S.L.I. policy to be paid to the beneficiary designated by the insured soldier. Section 602(g) provides "the insured shall have the right to designate the beneficiary or beneficiaries of the insurance * * * and * * * at all times have the right to change the beneficiary or beneficiaries of such insurance without the consent of such beneficiary or beneficiaries." Section 602(h) requires payment of the proceeds to the beneficiary so designated. The regulations of the Veterans Administration implement the statute by directing payment to the designated beneficiary. See 38 C.F.R. secs. 10.3446-10.3448 (1941 Supp.). The courts have consistently assumed that the statute means what it says. As a result, they have been especially vigilant in safeguarding the rights of the statutory beneficiary designated by the insured soldier and have swept

aside all technicalities in order to effectuate insured's intention that the proceeds be paid to the beneficiary named by him. *Bradley* v. *United States*, 143 F. 2d 573, 576 (C.A. 10), certiorari denied, *sub nom Bradley* v. *Bradley*, 323 U. S. 793; *Roberts* v. *United States*, 157 F. 2d 906, 909 (C.A. 4), certiorari denied, *sub nom Roberts* v. *Roberts*, 330 U. S. 829; *Mitchell* v. *United States*, 165 F. 2d 758, 760 (C. A. 5).

Here, as the 1940 Act permitted, the insured designated his mother as principal beneficiary (R. 13). Neither appellee nor the court below questions that designation nor disputes the fact that the beneficiary so designated was the one intended by the insured to receive the proceeds. Applying the clear provisions of Section 602(g) and (h) to this case, it is apparent that the designated beneficiary alone is entitled to the proceeds.

We turn then to the California law relied on by the court below. The pertinent provisions of the community property laws of California are set forth in that State's Civil Code, Sections 162, 163, 164, 161a and 172. Section 162 provides that all property of the wife acquired before marriage or by way of gift or devise is her separate property. Section 163 similarly defines the husband's separate property. All other property acquired by either spouse is declared by Section 164 to be community property. Section 161a authorizes the husband to manage and control the community property, but Section 172 prohibits him from making a valid

gift of more than one-half of such property, without the written consent of his wife. Section 172 was cited in *Mazman* v. *Brown*, 12 Cal. App. 2d 272, a leading case on the application of community property laws to control distribution of insurance proceeds, for the following proposition (p. 275):

> Under the law as it has been settled in this state, the insured could not make a valid gift of the proceeds of insurance purchased with community funds in excess of 50 per cent thereof, without the written consent of the wife. (Civ. Code, sec. 172; * * *).

The court below expressly relied on this California law as interpreted in the *Mazman* case (R. 24), held the insured's designation of his mother ineffective as to 50 per cent of each of the monthly payments under the policy, and awarded that 50 per cent to appellee, who was not designated by the insured as a beneficiary. This result flies in the face of the provisions of the 1940 Act which require the entire amount of each monthly installment to be paid the designated beneficiary for the rest of her life.[10] At the same time it reads out of the 1940 Act its most important provision—that

[10] Section 602(h)(3) of the N.S.L.I. Act does recognize that appellee may eventually receive some of the monthly installments. Thus, as pointed out in footnote 3, *supra*, p. 4, if the designated principal beneficiary (Louise M. Wissner) and the designated contingent beneficiary (Leandous H. Wissner) should die before receipt of 120 monthly installments from the Veterans Administration, the entire remainder of those payments would be paid to appellee as the surviving widow of the insured.

directing payment of the proceeds to the *beneficiary designated by the insured.*

(b) Additional provisions of the 1940 Act would be made meaningless or inoperative if community property interests in N.S.L.I. policies were recognized. Thus, Section 602(i), Appendix A, *infra*, pp. 57-58, provides that "the right of any beneficiary to payment of any installments shall be conditioned upon his or her being alive to receive such payments. No person shall have a vested right to any installment or installments of any such insurance and any installments not paid to a beneficiary during such beneficiary's lifetime shall be paid to the beneficiary or beneficiaries within the permitted class next entitled to priority * * *." See 38 C.F.R. 10.3449 (1941 Supp.). If the community property laws of the state apply to N.S.L.I. proceeds, those proceeds would then become the absolute property of the appellee, the widow, at the moment of her spouse's death. *N. Y. Life Insurance Co.* v. *Bank of Italy*, 60 Cal. App. 602, 607, sets forth the applicable California law by pointing out that "the interest of the wife *eo instanti* ripened and was payable at the instant of the husband's death. * * * at the same moment the community interest of the wife [*i.e.* in the insurance policy in which her husband had not designated her as the beneficiary] vested in her." This result is inconsistent with the language just quoted from Section 602(i), which expressly prohibits the surviving spouse from hav-

ing any vested rights in N.S.L.I. insurance. Even if the insured had designated appellee as principal beneficiary for one-half of the proceeds, her only rights under the 1940 Act would be to receive each monthly payment as it became due, conditioned on her being alive to receive such payments. Thus, application of the community property law here places the widow in a more advantageous position than she would have been in—under the 1940 Act—had she been named by the insured as the principal beneficiary for one-half of the policy's proceeds.

(c) Similarly, Section 602(j), Appendix A, *infra*, p. 58, prohibits payments of benefits to the heirs or legal representatives as such, of either the insured or the designated beneficiary. If appellee is allowed to take the proceeds under the community property law theory which considers her right to the proceeds as having vested instantly upon the maturity of the policy, it is obvious that upon her death, any unpaid installments would go to her heirs or legal representatives, in violation of Section 602(j).

(d) Section 608, Appendix A, *infra*, p. 59, states that, except in the event of suit as provided in Section 617, decisions rendered by the Adminstrator of Veterans' Affairs "shall be final and conclusive on all questions of law and fact." Section 617 authorizes suits to be brought against the United States in the event of disagreement as to a claim

under the Act, but provides that such suits shall be subject to the "same conditions and limitations as are applicable to United States Government (converted) life insurance under the provisions of sections 19 and 500 of the World War Veterans' Act, 1924, as amended." Section 19 (38 U.S.C. 445), in turn, requires that such a suit be brought against the United States in a federal district court. These provisions remove all doubt that the Administrator's determination is conclusive unless overturned in the *federal* courts.

Application of the state's community property law to the distribution of N.S.L.I. proceeds wipes out the finality accorded by the 1940 Act to the Administrator's determinations and subjects those determinations to review by state courts, in clear violation of the statutory requirement allowing review only in the federal district courts. The facts of the instant case emphasize this violation. Appellee filed an administrative claim with the Veterans Administration, alleging a community property right to one-half of the proceeds. (Appendix B, *infra*, pp. 68-69). The Administrator, acting under Section 608's direction to him to carry out the purpose of the 1940 Act and "decide all questions arising" under that Act, rejected her claim (Appendix B, *infra*, pp. 70-71). That rejection, by the express terms of Section 608, is final and conclusive, unless review was sought in a federal district court. No such review was sought here. Instead, appellee went into a state court, alleging the

same community property claim rejected by the Administrator, and there obtained a reversal of the Administrator's decision, a result repugnant to the precise terms of Section 608.[11]

3. This conflict between the provisions of the 1940 Act and those of the state law is underscored by the examination of the comprehensive and detailed nature of the 1940 Act and the need for its uniform administration on a national basis. In addition, a consistent administrative interpretation, dating back to at least 1920, shows that the conflict between federal and state laws can be avoided only by rejecting, *in toto*, the bearing of state community property laws on N.S.L.I. policies.

(a) State law could, of course, apply if it were shown that Congress had expressly or tacitly di-

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[11] Still further proof that it was never intended that state laws should give rise to community property interests in N.S.L.I. policies is shown by the provisions of the 1935 Act, discussed, *infra*, pp. 43-54. That Act, which is part of the 1940 Act, immunizes N.S.L.I. proceeds from all legal process. Obviously, the recognition of a community property interest in N.S.L.I. proceeds is absolutely meaningless if the proceeds are exempt from process, at least where those proceeds are the only assets held by the beneficiary against whom the widow asserts her community property claim.

In addition, Section 500 of the World War Veterans Act of 1924 (38 U.S.C. 551), incorporated by reference into Section 617 of the 1940 Act, as pointed out above, p. 29, limits attorney's fees to 10% of the insurance proceeds recovered. This limitation may be avoided where, as here, suit to reverse the Administrator's decision is brought in a state court, without notice to the Administrator, rather than in the federal district court as required by the N.S.L.I. Act. Cf. *Hines* v. *Lowrey*, 305 U.S. 85.

rected that state law should be accepted as a federal rule. *Childers* v. *Beaver*, 270 U. S. 555, 559; *Board of County Commissioners* v. *United States*, 308 U. S. 343, 349-350; cf. use of state law required by the Federal Tort Claims Act (28 U.S.C. 1346 (b)). But here Congress, by the comprehensive and detailed nature of the life insurance system it set up in the 1940 Act, has demonstrated its desire to achieve a national and uniform administration of the Act and an intent to leave no room for applying varying state laws. Every possible phase and stage of the insurance program is carefully dealt with in the Act: the qualifications for insurability; the type and plan of insurance; the conversion and exchange privileges; the ceiling on the amount of the insurance; the basis for computation of premium rates; the time and method of premium payments; the waiver of premiums during continuous total disability; the designation of beneficiaries; the manner of payment of benefits to beneficiaries; and the payment of benefits where the beneficiary is undesignated or dead. These and many other express, detailed provisions of the 1940 Act show the care with which the insurance program was established by Congress. At the same time, they make inescapable the conclusion that had Congress intended to place community property limitations on the rights of beneficiaries, those limitations would have also been expressed in detail. *Barton* v. *United States*, 75 F. Supp. 703 (S.D. Calif.), a recent government insurance case comparable to

the present one, emphasizes the need for rejecting such limitations. The court in that case, referring to the detailed provisions of the 1940 Act, stated (75 F. Supp. at 705):

> The cited provisions are persuasive that it was the purpose of Congress to provide in all details for the issuance and administration and settlement of service life insurance on a national basis, as the title of the Act implies. [James Stewart & Co. *v.* Sadrakula, 1940, 309 U. S. 94, 103, 104, 60 S. Ct. 431, 84 L. Ed. 596, 127 A.L.R. 821; New York Central R.R. Co. *v.* Winfield, 1917, 244 U. S. 147, 153, 37 S. Ct. 546, 61 L. Ed. 1045, L.R.A. 1918C, 439, Ann. Cas. 1917D, 1139; United States *v.* Fuller, 5 Cir., 1938, 97 F. 2d 541, 542.]

This need for uniform administration, required by the detailed provisions of the 1940 Act, would be frustrated in various ways if N.S.L.I. proceeds were distributed in accordance with community property laws of the several states. First, in non-community property states, the insured's desire to have the proceeds of the policy paid to the beneficiary would be fully effectuated; in the community property states it would not.[12] Second, the community property laws of the various states vary considerably as to the extent to which a widow may share in the proceeds of her husband's life

[12] The following have adopted community property laws: California, Louisiana, Oklahoma, Texas, Idaho, Washington, Arizona, Nevada, New Mexico, Oregon, Hawaii, Michigan and Nebraska. See de Funiak, *Principles of Community Property* (1943 ed. and 1948 Cum. Supp.), vol. 1, ch. 4.

insurance policies made payable to third persons. Thus, in Washington, the entire proceeds of such a policy must go to the widow, regardless of whom the insured named as beneficiary. *Occidental Life Insurance Co. v. Powers*, 192 Wash. 475. This differs sharply from the California rule, where the wife is entitled to half of the proceeds unless she has consented in writing to the naming of a third beneficiary. *Mazman v. Brown*, 12 Cal. App. 2d 272; see cases cited *supra*, fn. 6, p. 18. In Texas, the rule seems to be that the surviving wife can recover no portion of the proceeds unless it is shown that the husband had named the third person as beneficiary for the purpose of defrauding the wife. *Rowlett v. Mitchell*, 52 Tex. Civ. App. 589, 592. Where proof of such fraud is made, the widow in Texas may recover the entire proceeds of the policy. *Moore v. California-Western States Life Ins. Co.*, 67 S. W. 2d 932 (Tex. Civ. App.). Third, the fact that free N.S.L.I. insurance was granted to many servicemen will, by itself, effect a different distribution of policy proceeds within the same community property state. For example, appellee's claim is bottomed on her assertion that the insured's earnings were used in paying the premiums. In many cases, however, N.S.L.I. policies, carrying the maximum coverage of $10,000, were issued under a federal statute stating "that the premiums shall be paid by the Government." Act of July 3, 1941, 55 Stat. 240, as amended, 10 U.S.C. 308a. If the latter type of

policy had been issued in the instant case, application of the community property law would have compelled the state court to reject the widow's claim completely. Still further complications might arise where the serviceman changes his domicile from a community property state to a non-community property state, or vice versa, and premiums are paid during both periods.

(b) A consistent administrative construction fortifies the view that the conflict can be avoided only by a holding that state community property laws furnish no basis for the creation of a community property interest. At least since 1920 it has been uniformly held by the Veterans Administration and its predecessor agencies, the Bureau of War Risk Insurance and the Veterans Bureau, that such state property laws have no application to the servicemens' insurance proceeds. See Appendix B, *infra*, pp. 60-71.[13]

Following the often-applied general principle

[13] The letter from the Veterans Administration points out that where the *estate*, rather than a particular designated beneficiary, was entitled to the proceeds, state community property laws control the distribution of that estate. Appendix B, *infra*, pp. 62, 65. This result is required by the congressional direction that state law shall apply when the proceeds are paid to the insured's estate. *United States* v. *Robinson*, 40 F. 2d 14, 16 (C. A. 5). In the instant case, there is no question that the proceeds are being paid to the particular beneficiary designated by the insured. Therefore, the *Robinson* case, and others like it relied on by appellee at page 15 of her Statement Opposing Jurisdiction and Motion to Dismiss or Affirm, are obviously inapplicable to the instant case.

of deference to administrative construction, this Court has already recognized that the consistent administrative construction given government insurance legislation by the Veterans Administration "is entitled to great weight, 'and such construction is not to be overturned unless clearly wrong, or unless a different construction is plainly required.' *United States* v. *Jackson*, 280 U. S. 183, 193." *United States* v. *Citizens Loan & Trust Co.*, 316 U. S. 209, 214 (payment of war-risk insurance); *United States* v. *Madigan*, 300 U. S. 500, 505 (revival of war-risk policy). This general rule has, of course, special applicability to the National Service Life Insurance system, for "administrative practice, consistent and generally unchallenged * * * has peculiar weight when it involves a contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion, of making the parts work efficiently and smoothly while they are yet untried and new" (*Norwegian Nitrogen Products Co.* v. *United States*, 288 U. S. 294, 315; *United States* v. *American Trucking Assn's, Inc.*, 310 U. S. 534, 549; *Adams* v. *United States*, 319 U. S. 312, 314-315; *Edward's Lessee* v. *Darby*, 12 Wheat. 207, 210), especially where, as here, the agency participated in drafting the measure.[14] *United States* v. *American Trucking Assns., ibid.*

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[14] The Veterans Administration participated actively in the drafting of the measure which became the N. S. L. I. Act. The major provisions of that Act were suggested by the

4. These considerations, we submit, show that the clash between the 1940 Act and California's community property laws is direct and immediate. It is also plain that the federal statute is fully within congressional power. (*Supra*, pp. 22-23.) In such circumstances, the Constitution requires that the state law yield to the federal;[15] here, that requirement can be fulfilled only by holding that the community property laws of California do not give rise to any interest in N. S. L. I. policies.

A contrary holding, as we have shown, would circumvent the 1940 Act and profoundly interfere with the Congressional scheme for National Service Life Insurance. The instant case, for example, is nothing more than an attempt by appellee to obtain, in a state court, a result forbidden by the 1940 Act. In fact, appellee concedes that her claim would have proven abortive had it been brought in a federal court directly against the United States to compel payment to her of half the proceeds of

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Veterans Administration. In that drafting the Veterans Administration evidently drew upon the experience it had acquired in administering the prior service insurance legislation, which was closely followed in establishing the N. S. L. I. system. 86 Cong. Rec. 12920. See *supra*, fn. 9, p. 23.

[15] See *Davies* v. *Beach*, 74 Cal. App. 2d 304, 309, where the court, recognizing the Supremacy Clause, held that the state statutory right of bequest "is not paramount" to the power of the federal government to control the distribution of proceeds of United States savings bonds. Accord: *Myers* v. *Hardin, Admr.* 208 Ark. 505; *Meyer* v. *Mercier*, 102 Colo. 422; *In re Briley's Estate*, 155 Fla. 798; *Harvey* v. *Rackliffe*, 141 Me. 169; *Franklin Washington Trust Co.* v. *Beltram*, 133 N. J. Eq. 11; *United States* v. *Dauphin Deposit Trust Co.*, 50 F. Supp. 73 (M. D. Pa.).

the policy. (Statement Opposing Jurisdiction and Motion to Dismiss or Affirm, p. 4). All of the federal cases have rejected attempts to compel the United States to divert one-half of the proceeds of a N. S. L. I. policy from a designated beneficiary to a widow asserting a community property claim. *Pack* v. *United States*, 176 F. 2d 770 (C. A. 9); *Barton* v. *United States*, 75 F. Supp. 703 (S. D. Calif.); *James* v. *United States*, No. 6061-B.H. (S. D. Calif.); *Rhodes* v. *United States*, No. 5845-B (S. D. Calif.); *Hayek* v. *Hayek and United States*, No. 7400-W (S. D. Calif.). As stated in the *Pack* case:

> Appellant insists, however, that a different situation exists here in that she has a vested right in the proceeds by reason of the California community property law and a congressional act divesting her of that right would be void as contrary to the Fifth Amendment. The vested right is based upon the use of community funds to pay premiums. The vested right, if it exists, cannot be asserted against the Government. The Government, by reason of congressional mandate must pay the proceeds to the mother, the beneficiary named in the policy. This is essentially so in order to permit the Veterans Administration to administer the Act in a uniform manner.[16]

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[16] Dictum in the *Pack* case concerning the possibility of asserting the community property claim in a state court lends some support to the conclusion reached by the court below (176 F. 2d 770, 771). But that point was not neces-

Three lower California courts have reached the same conclusion where, as here, the widow instituted suit against the designated beneficiary. *Johnson* v. *Shelton*,[17] No. 522,648 (Sup. Ct. of Calif., Co. of Los Angeles); *Nobles* v. *Cannell*, No. 502,587 (Sup. Ct. of Calif., Co. of Los Angeles) (where the court stated that "the community property laws of the State of California confer no rights on plaintiff to share in the proceeds of the policy"); *Thomas* v. *Thomas*, No. 547,835 (Sup. Ct. of Calif., Co. of Los Angeles) (where the court expressly rejected the decision of the District Court of Appeal in the instant case). Contra: *Carballo* v. *McFann*, No. 543,410 (Sup. Ct. of Calif., Co. of Los Angeles).

In particular, the nature of the relief prayed for in this case, together with the form in which the district court's judgment was cast, clearly expose the purpose of the state court proceeding to defeat the policy expressed in the 1940 Act by reversing the order of the statutory provisions relating to N. S. L. I. beneficiaries and by giving to others interests denied to them by those provisions. The complaint makes it clear that it seeks to impress a trust on the proceeds as they are received by the designated beneficiaries in order to enable a non-designated beneficiary to obtain the beneficial use of the proceeds. The complaint alleges,

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sary to the decision and the Court of Appeals for the Ninth Circuit did not even discuss the import of the 1935 Act upon such suit. See *infra*, pp. 43-54.

[17] The opinion in this case is reprinted at p. 26 of Appellant's Statement as to Jurisdiction.

that one-half of the proceeds already received were "received for the use and benefit" of the widow (R. 4). Judgment for those proceeds as well as a court order that the designated beneficiary pay over to the widow "one-half of all moneys hereafter received from the proceeds of the said insurance policy immediately upon the receipt thereof" was demanded by the complaint (R. 6-7). The trial court granted the relief sought in full, thus thwarting the express policy of the 1940 Act by asserting the laws of the state against the laws of the United States and by imposing restrictions on the rights of N. S. L. I. beneficiaries prohibited by, and inconsistent with, the 1940 Act. The need for avoiding such a result, in order to avoid nullification of the Supremacy Clause, is apparent. Cf. *McCune v. Essig*, 199 U. S. 382.

B. ***Even if the federal statute did not conflict with state laws, federal law must control the distribution of proceeds of a N.S.L.I. policy.***

N.S.L.I. policies are federal government contracts, based on federal statutes, and must therefore be interpreted in light of federal law, regardless of the law of the state in which the contract was made or is being fulfilled. It is immaterial, in such a situation, whether state and federal laws are incompatible. As stated in *Charleston & Western Carolina Ry. Co. v. Varnville Furniture Co.*, 237 U. S. 597, 604, "When Congress has taken the particular subject-matter in hand coincidence is as

ineffective as opposition * * *." Cf. *Hines* v. *Davidowitz*, 312 U. S. 52.

1. It is familiar law that the rights and obligations under a federal contract present a federal question and must be answered in light of federal rather than state law. In a consistent line of decisions by this Court, it has been established that "in the interpretation and application of federal statutes, federal not local law applies" (*Prudence Corp.* v. *Geist*, 316 U. S. 89, 95), and that where a claim is derived from a federal statute, "the state court was bound to proceed in such manner that all the substantial rights of the parties under controlling federal law would be protected." *Garrett* v. *Moore-McCormack Co.*, 317 U. S. 239, 245, 246. See also *Board of County Commissioners* v. *United States*, 308 U. S. 343, 351; *Deitrick* v. *Greaney*, 309 U. S. 190, 200-201; *D'Oench, Duhme & Co.* v. *Federal Deposit Ins. Corp.*, 315 U. S. 447, 459, 468-469; *Jerome* v. *United States*, 318 U. S. 101, 104; *Sola Electric Co.* v. *Jefferson Electric Co.*, 317 U. S. 173, 176; *Midstate Horticultural Co.* v. *Penna. R. Co.*, 320 U. S. 356; *National Labor Relations Board* v. *Hearst Publications*, 322 U. S. 111, 123.

As far as government contracts in general are concerned, this Court has regularly applied federal law. *Royal Indemnity Co.* v. *United States*, 313 U. S. 289; *Clearfield Trust Co.* v. *United States*, 318 U. S. 363; *United States* v. *County of Allegheny*, 322 U. S. 174, 183.

2. This same rule must be applied to N.S.L.I. policies. They are contracts of the United States. In *United States* v. *Zazove*, 334 U. S. 602, 611, fn. 12, Chief Justice Vinson, speaking for a unanimous court, observed that these policies "give rise to an obligation that has the force of a binding contract with the serviceman insured. See *Lynch* v. *United States*, 292 U. S. 571, 579 (1934)." Since they are federal contracts, their interpretation presents a question of federal law not controlled by the law of any state. As stated in *Woodward* v. *United States*, 167 F. 2d 774, 778-779 (C. A. 8):

> Policies of National Service Life Insurance are, of course, contracts of the United States and possess the same legal incidents as other government contracts. *Lynch* v. *United States*, 292 U. S. 571, 576, 54 S. Ct. 840, 78 L. Ed. 1434. The validity and construction of such policies present questions of federal law. *Clearfield Trust Co.* v. *United States*, 318 U. S. 363, 366, 63 S. Ct. 573, 87 L. Ed. 838; *United States* v. *County of Allegheny*, 322 U. S. 174, 183, 64 S. Ct. 908, 88 L. Ed. 1209.

Accord: *Pack* v. *United States*, 176 F. 2d 770 (C. A. 9); *United States* v. *Fuller*, 97 F. 2d 541, 542 (C. A. 5); *Cassarello* v. *United States*, 271 Fed. 486 (M. D. Pa.), affirmed, 279 Fed. 396 (C. A. 3).

The particular transaction involved in the instant case emphasizes the need for applying federal law. What is involved here are conflicting claims to the proceeds of a contractual obligation undertaken

by the Government under the 1940 Act, which, as we have shown above, is in direct furtherance of the war powers conferred on the Congress by the Constitution. This Court has pointed out that in the soldier-insurance situation "the only relations of contract [are] between the Government" and the insured serviceman. *White* v. *United States*, 270 U. S. 175, 180. See *Von Der Lippi-Lipski* v. *United States*, 4 F. 2d 168 (C. A. D. C.); *United States* v. *Sterling*, 12 F. 2d 921 (C. A. 2). And, furthermore, this Court has completely dispelled any doubt that the "scope, nature, legal incidents and consequences" of the Government-serviceman relation, as well as any interferences therewith, raise federal questions governed only by federal law free from modification by state law. *United States* v. *Standard Oil Co. of California*, 332 U. S. 301, 305, 306.[18]

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[18] That case recognizes that:

"Perhaps no relation between the Government and a citizen is more distinctively federal in character than that between it and members of its armed forces. To whatever extent state law may apply to govern the relations between soldiers or others in the armed forces and persons outside them or nonfederal governmental agencies, the scope, nature, legal incidents and consequences of the relation between persons in service and the Government are fundamentally derived from federal sources and governed by federal authority. See *Tarble's Case*, 13 Wall. 397; *Kurtz* v. *Moffitt*, 115 U. S. 487. So also we think are interferences with that relationship such as the facts of this case involve. For, as the Federal Government has the exclusive power to establish and define the relationship by virtue of its military and other powers, equally clearly it has power in execution of the same functions to protect the relation once formed from harms inflicted by others." (332 U. S. 301, 305, 306).

A Judgment Directing the Satisfaction of a Community Property Claim Out of N.S.L.I. Proceeds in the Hands of the Designated Beneficiary Is Invalid under the 1935 Act (Incorporated into the 1940 Act)

Appellee's case is bottomed on the assumption that the California community property law confers upon her an interest in the N.S.L.I. policy here involved. In Point I we have set forth the reasons showing the unsoundness of that assumption. Even if we were to accept that assumption,[19] however, the judgment below is in error because it directs the satisfaction of the community property claim out of N.S.L.I. proceeds in the hands of the designated beneficiary. Appellee's argument, on this

[19] We should, however, like to point out the error in the further necessary assumption made by the court below that the premiums on the N. S. L. I. policy in this case were paid from community funds (R. 21). See Appellant's Brief in Opposition to Motion of Appellee for Affirmation of Judgment of State Court and Dismissal of Appeal, p. 50. Even under the community property laws, a soldier's pay is generally considered separate property rather than earnings which fall into the community. The Spanish law of community property, which has been adopted as the basis for the community property system in California (*Packard* v. *Arellanes*, 17 Cal. 525, 531), provides that military pay belongs to the husband alone. de Funiak, *Principles of Community Property*, vol. 1, p. 193; vol. 2, pp. 13, 272. *Johnson* v. *Shelton*, No. 522,648 (Superior Ct. of Cal.); reprinted at p. 26 of Appellant's Statement as to Jurisdiction) expressly refused to follow the court below and "observed that in the instant case the insurance premiums were paid by deducting their amount from the pay of the veteran. In one aspect such pay represents a gift by the government rather than earnings, because the government can compel any person to serve in its armed services without pay (*United States* v. *Williams*, 302 U. S. 46)." In the present case, the premiums were also paid by deduction from the husband's pay. R. 3, 8, 13.

aspect of the case, seems to be that the protection afforded to the designated beneficiary by the 1940 Act ends with "the payment of the benefits due, under the insurance, to the beneficiary named by the insured"—(Statement Opposing Jurisdiction and Motion to Dismiss or Affirm, p. 5). After such payment is made by the Veterans Administration and the proceeds "are in the hands of the beneficiary," a judgment under the community property laws of California, appellee contends, may divert one-half of the actual proceeds of the policy from the designated beneficiary to the appellee. There is a short and conclusive answer to this argument: Congress, in the 1935 Act, has expressly provided otherwise, and that provision does not violate any of appellee's property rights under the Fifth Amendment.

A. *The 1935 Act expressly immunizes N.S.L.I. proceeds against claims and attachment even after the proceeds have been received by the beneficiary*

Section 616 of the 1940 Act incorporates by reference "the provisions of Public Law Numbered 262, Seventy-fourth Congress, approved August 12, 1935 (49 Stat. 607)." The 1935 Act, codified at 38 U. S. C. 454a, provides:

> Payments of benefits due or to become due shall not be assignable, and such payments made to, or on account of, a beneficiary under any of the laws relating to veterans shall be

> exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, *either before or after receipt by the beneficiary* • • • (Italics ours).

This 1935 Act rewrote the provisions of Section 22 of the World War Veterans Act for the express purpose of making it clear that the freedom of insurance payments (and of any other payments under veterans laws) from taxation, claims, and attachment, levy or seizure, was *not* to be cut off at the time of the receipt of the payments by the beneficiary. Prior to the addition of the above-italicized clause in the 1935 Act, there had been some doubts as to whether the immunity conferred by Section 22 protected the beneficiary subsequent to his receipt of the payments. *Trotter* v. *Tennessee*, 290 U. S. 354; *McIntosh* v. *Aubrey*, 185 U. S. 122. The italicized language was inserted into the Act to set at rest the doubts created by these decisions. See S. Rep. 1072,[20] 74th Cong., 1st sess., pp. 6-7.

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[20] S. Rep. 1072 was the report of the Senate Committee on Finance on H. R. 3979, which became the Act of August 12, 1935. The legislative history of that Act is as follows: H. R. 3979, was introduced on January 16, 1935 for the purpose of safeguarding "the estates of veterans derived from payments of pension, compensation, emergency officers' retirement pay and insurance • • •." 79 Cong. Rec. 533. The bill was reported out favorably by the Committee on World War Veterans Administration on January 23, 1935. 79 Cong. Rec. 859; H. Rep. No. 16, 74th Cong., 1st sess. It passed the House on June 3, 1935, with no discussion concerning the problem now here. 79 Cong. Rec. 8557. It was then reported by the Senate Finance Committee (S. Rep. 1072, 74th Cong.,

That this was the very purpose of the 1935 amendment is also manifested by this Court's opinion in *Lawrence* v. *Shaw*, 300 U. S. 245, 249:

> The World War Veterans' Act, 1924, provided that the compensation and insurance allowances should be "exempt from all taxation." The Act of 1935 is more specific, providing that the payments shall be exempt from taxation and shall not be liable to process "either before or after receipt by the beneficiary."

See *Carrier* v. *Bryant*, 306 U. S. 545, 547; *U. S. Trust Co.* v. *Helvering*, 307 U. S. 57; *Tompkins* v. *Tompkins*, 132 N. J. L. 217, 38 A. 2d 890. We submit that the terms of the 1935 Act, coupled with judicial and congressional recognition of its purpose, completely undermine appellee's contention that the federal statutory immunity ceases upon payment of the insurance proceeds to the designated beneficiary.[21] At the same time those con-

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1st sess; 79 Cong. Rec. 10997), and passed the Senate on July 29, 1935. 79 Cong. Rec. 11997. The President approved the bill and it became Public Law 262, on August 12, 1935. 79 Cong. Rec. 13992.

[21] This conclusion is in no way weakened by *Gaskins* v. *Security-First National Bank*, 30 Cal. App. 2d 409, relied on by appellee at page 7 of her Statement Opposing Jurisdiction and Motion to Dismiss or Affirm. That case, and similar cases cited by appellee (*e.g.*, *In re Flanagan*, 31 F. Supp. 402 (D.D.C.); *Schlaefer* v. *Schlaefer*, 112 F. 2d 177, 185 (C.A. D.C.)), aside from the fact that they cannot be readily reconciled with the express language of the 1935 Act, simply indicate that the statutory exemption of payments made to a veteran may not be invoked by the veteran himself to avoid his legal obligation to support his wife and children. These "support" cases clearly have no application to the

siderations furnish a conclusive answer to the argument that judgments, including those based on community property laws, may be satisfied out of N.S.L.I. proceeds themselves while they are in the beneficiary's hands.

B. *The immunity conferred by the 1935 Act, exempting N.S.L.I. proceeds from judicial process while they are in the hands of the beneficiary, does not violate the Due Process Clause of the Fifth Amendment*

Appellee contends that a failure to allow her to satisfy her community property claim out of N.S.L.I. proceeds in the hands of the designated bene-

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instant case. Here there is no claim of lack of support or of a failure by the husband to make other adequate provisions for his wife. Nor does the widow allege that she is dependent in any way on the N.S.L.I. insurance proceeds for her support. The court below, in fact, noted that the widow would be entitled to her community property share "without regard" to the amount or condition of the estate remaining in the husband's hands at the time of his death (R. 24). In addition, the "support" cases involved attempts by the beneficiary of the payment, *i.e.*, the husband, to set up an exemption statute to avoid a legal obligation owing *by him* to his wife or children. Certainly no analogous situation exists here where the beneficiary of the insurance payments is not the veteran-husband, nor even his estate, but a third party, properly designated under the federal statute, who is under no obligation to the wife.

Equally lacking in merit is appellee's claim that the 1935 Act protects the insurance payments from only the claims of "creditors" (Statement Opposing Jurisdiction and Motion to Dismiss or Affirm, p. 11). The broad terms of the 1935 Act make it obvious that it is not so limited and that it was intended to immunize the payments against any sort of judicial process whatever. The "language [of the 1935 Act] is about as broad as language could be found in a statute extending the privilege of exemption." *In re Houching*, 17 F. Supp. 556, 558 (S.D. W. Va.).

ficiary would contravene Article V of the Constitution by depriving her of her vested community property rights. The court below accepted this argument and concluded (R. 25):

> that, in view of the Fifth Amendment, the federal government had no power to provide, as it is contended it did in section 454a, *supra*, [the 1935Act] that payments made to a beneficiary of a national service life insurance policy shall be exempt from the claims of the widow of the deceased insured to the right vested in her under the laws of this state to one-half of such payments *after* their receipt by the beneficiary.

This argument is specious. First, it ignores the fact that the 1940 Act—which incorporated the 1935 statute—was on the books before appellee's husband purchased his N.S.L.I. policy, and long before any of her rights could have "vested", even under California law. Secondly, it ignores the basic principle that Congress is not prohibited by the Due Process clause from interfering with private rights, even if they exist and have actually vested, so long as the action taken falls within some paramount federal power and has reasonable warrant in the circumstances.

1. When it was passed in 1940, the N.S.L.I. Act expressly provided, through the incorporation of the 1935 statute, that proceeds of N.S.L.I. policies would "not be liable to attachment, levy, or seizure

by or under any legal or equitable process whatever, either before or after receipt by the beneficiary" (*supra*, pp. 44-45). Moreover, the 1940 Act also specifically provided (in Section 602(i)) that "no person shall have a vested right" to the proceeds of a N.S.L.I. policy. See *supra*, p. 27; *infra*, p. 58.

Regulations early issued by the Administrator of the Veterans Administration, in accordance with the authority conferred upon him by the Act, paraphrase and implement the latter statutory provision by prescribing that "no person shall have a vested right to any installment" and "no installment * * * shall be paid to the heirs, creditors, or legal representatives * * * of the insured or of any beneficiary." (6 F.R. 1162; 38 C.F.R., Section 10.3449, 1941 Supp.). And, as we have shown (*supra*, pp. 34-35; *infra*, pp. 60-71), the Veterans Administration has also held, from the very beginning of the administration of the National Service Life Insurance system, that wives of soldier-husbands residing in community property states have no interest in N.S.L.I. policies or proceeds.

Major Wissner's purchase of a N.S.L.I. policy, in 1942, was made pursuant to these pre-existing provisions of the statutes and regulations. Accordingly, whatever rights appellee secured in the policy or its proceeds were likewise secured subject to these pre-existing provisions, and it was impossible for her interest or rights to "vest" in any sense which made them superior to the statutory rules which were already on the books when her

husband entered the army and took out his policy. This is made even clearer by the fact that under the California law, the "vesting" of a community property interest in insurance proceeds occurs at maturity of the policy. *Supra*, pp. 18, 25-26, 27. Since the policy in the instant case matured in 1945 (R. 13), it is plain that the rights claimed by appellee under the state law arose several years *after* the enactment of the 1940 and 1935 Acts, and, therefore, could not have been improperly "divested" by either of those Acts.

2. In any event, it has always been recognized that the destruction of a valuable economic right or relationship does not in itself render a statute invalid on substantive due process grounds. *West Coast Hotel* v. *Parrish*, 300 U. S. 379, 391; *Nebbia* v. *New York*, 291 U. S. 502, 525; *Pennsylvania Coal* v. *Mahon*, 260 U. S. 393, 413. And, where Congress in the exercise of an admittedly granted power has adopted a means reasonably adapted to achieve a legitimate end, such legislation has withstood constitutional challenge even though the effect is to set aside vested rights. *Norman* v. *Baltimore & Ohio R. Co.*, 294 U. S. 240; *Calhoun* v. *Massie*, 253 U. S. 170; *Wright* v. *Union Central Insurance Co.*, 304 U. S. 502; *Hamilton* v. *Kentucky Distilleries Warehouse Co.*, 251 U. S. 146; *Lynch* v. *United States*, 292 U. S. 570, 579.

Directly in point is this Court's decision in *Ruddy* v. *Rossi*, 248 U. S. 104. That case involved

the applicability of the exemption provision of Section 4 of the Homestead Act which provided:

> No lands acquired under the provisions of this act shall in any event become liable to the satisfaction of any debt or debts contracted prior to the issuing of the patent therefor.

Before the patent from the United States for this land was issued, but after the homesteader had completed final entry on the land, and thus had become legally entitled to the land, he contracted the debt sued upon. A judgment on that debt was obtained against the landowner after patent issuance. Execution was issued and levied on the homestead. The lower court held that the land was liable on execution for the debt contracted between final entry and patent issuance, since the homesteader was legally entitled to the land at the time of final entry. This Court reversed, holding that the clear language of Section 4 must be applied. The issue there involved was posed by the Court as follows (248 U. S. 104, 106):

> Did Congress have power to restrict alienation of homestead lands after conveyance by the United States in fee simple? * * *
>
> The Constitution declares "The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States"; and it is settled that Congress has plenary power to dispose of public lands. *United States* v. *Gratiot*, 14 Pet. 526, 537. They may be leased, sold or given away upon

such terms and conditions as the public interests require. Instead of granting fee simple titles with exemption from certain debts, long leases might have been made or conditional titles bestowed in such fashion as practically to protect homesteads from all indebtedness.

"The sound construction of the Constitution must allow to the national legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional." *McCulloch* v. *Maryland*, 4 Wheat. 316, 421.

Acting within its discretion, Congress determined that in order promptly to dispose of public lands and bring about their permanent occupation and development it was proper to create the designated exemption; and we are unable to say that the conclusion was ill-founded or that the means were either prohibited or not appropriate to the adequate performance of the high duties which the legislature owed to the public.

Since the national defense and war powers of Congress—under which the N.S.L.I. system was established—are at least as broad as its power to dispose of land, this Court's opinion in the *Ruddy*

case fully sustains the power of Congress to provide, as it did in the 1935 and 1940 Acts, that statutory immunity should attach to veterans' insurance payments after their receipt by the beneficiary as well as before, even as against a "vested" claim. It was entirely reasonable for Congress to desire that beneficiaries of a N.S.L.I. policy should be permitted to keep the insurance proceeds as against the whole world, and it was not an undue interference with the rights of creditors and claimants to provide that they cannot look to those proceeds for satisfaction of their demands.

With particular reference to the 1935 Act, this Court has made it clear that the "before or after receipt" clause of the statute must be construed as protecting veterans' payments at least up until the time when those payments are expended or invested in other property. *Lawrence* v. *Shaw*, 300 U. S. 245, 251. The Court held in that case that the statutory exemption protects payment not only after their receipt by the beneficiary, not only while they are in his hands, but also while they are on deposit in his checking account. Failure to extend this protection, where the payments have been neither expended nor invested by the beneficiary, would, the Court observed, frustrate "the intent of the statute." 300 U. S. 245, 250-251.

The *Shaw* case does not discuss the constitutionality of the exemption statute. It assumes it. See *Culp* v. *Webster*, 25 Cal. App. (Sup.) 2d 759. No federal court, nor any state court, heretofore,

has cast any doubts on the Act's constitutionality.[22] The court below stands alone in challenging the validity of the enactment; its challenge must be contrasted with the recent opinion of another California District Court of Appeal in *Kauffman* v. *Kauffman*, 93 Adv. Cal. App. 966, 972:

> The provision in section 454a [the 1935 Act] that the payments and benefits due or to become due are exempt from taxation and the claims of creditors, and are not subject to legal or equitable process indicates that Congress intended to control the title to such payments and benefits both before and after payment. This control and the provisions of the section have been recognized and enforced. (*Barton* v. *United States*, 75 F. Supp. 703, 705; *Carrier* v. *Bryant*, 306 U. S. 545, 548 [59 S. Ct. 707, 83 L. Ed. 976].)

See also *Culp* v. *Webster*, 25 Cal. App. (Sup.) 2d 759.

CONCLUSION

For the foregoing reasons, we respectfully submit that the judgment below is erroneous and should be reversed.

PHILIP B. PERLMAN,
Solicitor General.
H. G. MORISON,
Assistant Attorney General.
PAUL A. SWEENEY,
MORTON HOLLANDER,
Attorneys.

DECEMBER, 1949.

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[22] See *Williams* v. *United States Fidelity & Guaranty Co.*, 107 F. 2d 210 (C.A. D.C.); *Bradley* v. *United States*, 143 F. 2d 573; (C.A. 10), certiorari denied, 323 U. S. 793. *Tompkins* v. *Tompkins*, 132 N. J. L. 217; *Purvis* v. *Walls*, 184 Ark. 887; *City of Atlanta* v. *Stokes*, 175 Ga. 201; *Speer* v. *Pierce*, 18 Tenn. App. 351.

APPENDIX A

STATUTES INVOLVED

1. Section 602 (g), (h), (i), (j), (k), 608 and 616 of the National Service Life Insurance Act of 1940 (Act of October 8, 1940, 54 Stat. 974, 1009, as amended by the Act of September 30, 1944, 58 Stat. 762),[23] 38 U.S.C. 802, 808 and 816, provide:

> SEC. 602 (g). The insurance shall be payable only to a widow, widower, child (including a stepchild or an illegitimate child if designated as beneficiary by the insured), parent (including person in loco parentis if designated as beneficiary by the insured), brother or sister of the insured. The insured shall have the right to designate the beneficiary or beneficiaries of the insurance, but only within the classes herein provided, and shall, subject to regulations, at all times have the right to change the beneficiary or beneficiaries of such insurance without the consent of such beneficiary or beneficiaries but only within the classes herein provided.
>
> (h) Such insurance shall be payable in the following manner:
>
> (1) If the beneficiary to whom payment is first made is under thirty years of age at the time of maturity, in two hundred and forty equal monthly installments: *Pro-*

[23] The amendatory Act of August 1, 1946, 60 Stat. 781, added several provisos, most of which affect only those policies maturing on or after August 1, 1946. Since the policy in the instant case matured on November 14, 1945 (R. 13), the amendatory provisos have not been set forth above.

vided, That the Administrator, under regulations to be promulgated by him, may include a provision in the insurance contract authorizing the insured or the beneficiary to elect in lieu of this mode of payment, a refund life income in monthly installments payable for such period certain as may be required in order that the sum of the installments certain, including a last installment of such reduced amount as may be necessary, shall equal the face value of the contract, less any indebtedness, with such payments continuing throughout the lifetime of such beneficiary: *Provided further*, That such optional settlement shall not be available in any case in which payments of insurance installments have been commenced prior to [September 30, 1944].

(2) If the beneficiary to whom payment is first made is thirty or more years of age at the time of maturity, in equal monthly installments for one hundred and twenty months certain, with such payments continuing during the remaining lifetime of such beneficiary: *Provided*, That the Administrator, under regulations to be promulgated by him, may include a provision in the insurance contract authorizing the insured or the beneficiary to elect, in lieu of this mode of payment, a refund life income in monthly installments payable for such period certain as may be required in order that the sum of the installments certain, including a last installment of such reduced amount as may be necessary, shall equal the

face value of the contract less any indebtedness with such payments continuing throughout the lifetime of such beneficiary: *Provided further*, That such optional settlement shall not be available in any case in which such settlement would result in payments of installments over a shorter period than one hundred and twenty months, nor in any case in which payments of insurance installments have been commenced prior to [September 30, 1944].

(3) Any installments certain of insurance remaining unpaid at the death of any beneficiary shall be paid in equal monthly installments in an amount equal to the monthly installments paid to the first beneficiary, to the person or persons then in being within the classes hereinafter specified and in the order named, unless designated by the insured in a different order—

(A) to the widow or widower of the insured, if living;

(B) if no widow or widower, to the child or children of the insured, if living, in equal shares;

(C) if no widow, widower, or child, to the parent or parents of the insured, if living, in equal shares;

(D) if no widow, widower, child, or parent, to the brothers and sisters of the insured, if living, in equal shares.

(i) If no beneficiary is designated by the insured or if the designated beneficiary does

not survive the insured, the beneficiary shall be determined in accordance with the order specified in subsection (h) (3) of this section and the insurance shall be payable in equal monthly installments in accordance with subsection (h) (1) or (2), as the case may be. The right of any beneficiary to payment of any installments shall be conditioned upon his or her being alive to receive such payments. No person shall have a vested right to any installment or installments of any such insurance and any installments not paid to a beneficiary during such beneficiary's lifetime shall be paid to the beneficiary or beneficiaries within the permitted class next entitled to priority, as provided in subsection (h).

(j) No installments of such insurance shall be paid to the heirs or legal representatives as such of the insured or of any beneficiary, and in the event that no person within the permitted class survives to receive the insurance or any part thereof no payment of the unpaid installments shall be made, except that if the reserve of a contract of converted national service life insurance, together with the dividends accumulated thereon, less any indebtedness under such contract, exceeds the aggregate amount paid to the beneficiaries, the excess shall be paid to the estate of the insured unless the estate of the insured would escheat under the laws of his place of residence, in which event no payment shall be made.

(k) When the amount of an individual monthly payment is less than $5, such amount

may, in the discretion of the Administrator, be allowed to accumulate without interest and be disbursed annually.

SEC. 608. The Administrator, subject to the general direction of the President, shall administer, execute and enforce the provisions of this part, shall have power to make such rules and regulations, not inconsistent with the provisions of this part, as are necessary or appropriate to carry out its purposes, and shall decide all questions arising hereunder. All officers and employees of the Veterans' Administration shall perform such duties in connection with the administration of this part as may be assigned to them by the Administrator. All official acts performed by such officers or employees designated therefor by the Administrator shall have the same force and effect as though performed by the Administrator in person. Except in the event of suit as provided in section 617 hereof, all decisions rendered by the Administrator under the provisions of this part, or regulations issued pursuant thereto, shall be final and conclusive on all questions of law and fact, and no other official or court of the United States shall have jurisdiction to review by motion or otherwise any such decision.

SEC. 616. The provisions of Public Law Numbered 262, Seventy-fourth Congress, approved August 12, 1935 (49 Stat. 607), and titles II and III of Public Law Numbered 844, Seventy-fourth Congress, approved June 29, 1936 (49 Stat. 2031), insofar as they are

applicable, shall apply to the provisions of this part.

2. The Act of August 12, 1935, 49 Stat. 607, 38 U.S.C. 454a, incorporated by reference into Section 616, *supra*, provides in pertinent part:

> Payments of benefits due or to become due shall not be assignable, and such payments made to, or on account of, a beneficiary under any of the laws relating to veterans shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary * * *.

APPENDIX B

LETTER FROM THE VETERANS ADMINISTRATION

VETERANS ADMINISTRATION
Washington 25, D. C.

Nov. 16, 1949.

Office of
Solicitor
Mr. H. G. Morison
Assistant Attorney General
Department of Justice
Washington 25, D. C.

Your File Reference:
In Reply Refer To: 2BR

Re: WISSNER, Leonard O., XC-6 035 603

DEAR MR. MORISON:

This refers to your request to be advised whether a claim for National Service Life Insurance bene-

fits by or on behalf of Margaret V. Wissner, surviving widow of the deceased insured, Leonard O. Wissner, has been filed in the Veterans Administration and, if so, what action has been taken thereon.

The official records of the Veterans Administration pertaining to National Service Life Insurance in this case reflect that Leonard O. Wissner applied for National Service Life Insurance in the principal sum of $10,000 on January 25, 1943, designating as principal beneficiary therefor his mother, Mrs. Louise Wissner, and as contingent beneficiary his father, Leandous H. Wissner. The insurance was in full force and effect when the insured died on November 14, 1945. Pursuant to the principal beneficiary's claim therefor, an award of insurance benefits at the rate of $76.70 per month was approved January 13, 1946, in favor of Louise M. Wissner and the award is presently in course of payment. Prior to the approval of said award a claim on behalf of Margaret V. Wissner was filed in the Veterans Administration on December 31, 1945 in the form of a letter dated December 26, 1945 from Cleary and Zeff, attorneys of Modesto, California; and said claim was denied as indicated in a letter from the Chief, Life Insurance Claims Division to Messrs. Cleary and Zeff, dated January 19, 1946. Copies of the above mentioned letters are attached hereto for your information.

Reference is also made to your request to be advised concerning the administrative practice of the Veterans Administration with particular reference to the question whether the proceeds of Na-

tional Service Life Insurance payable to a beneficiary within the restricted permitted class other than the widow of the insured, are regarded as community property if the marital domicile of the insured and his wife was in a community property state. As to this question, it is necessary to inform you that the Veterans Administration has consistently held that National Service Life Insurance maturing prior to August 1, 1946, the date of enactment of Public Law 589, 79th Congress, 60 Stat. 781, et seq., amending the National Service Life Insurance Act of 1940, is to be paid according to the specific provisions of the controlling federal statute and does not constitute community property under any state law. Moreover, as to yearly renewable term insurance issued under the War Risk Insurance Act, as amended, and the World War Veterans' Act, as amended, the Veterans Administration, as well as its predecessor agencies, the Bureau of War Risk Insurance and the Veterans Bureau, has uniformly held that such insurance does not constitute community property and that state community property laws have no applicability except possibly where the insurance is payable to the estate of a deceased person and after payment is subject, in its further distribution through the estate, to local statutes. This practice has been followed consistently since at least as early as 1920, when the General Counsel of the Bureau of War Risk Insurance approved the same. Many expressions in subsequent opinions of the General Counsel and the Solicitor are to the same effect, typical of them being a ruling which I made in an individual case on August 23, 1945, in a letter addressed to United States Senator

Warren G. Magnuson, a copy of which is attached hereto.

Very truly yours,

(S.) EDWARD E. ODOM,
Solicitor.

Encls:

Copy of letr. to Sen. W. G. Magnuson,
Copy of letr. fr. Cleary & Zeff, Attorneys,
Copy of letr. fr. Ch., Life Ins. Clms. Div. to Cleary & Zeff, Attys.

Copy

Enclosure No. 1

Copy of letter to Senator Magnuson

August 23, 1945.

Honorable Warren G. Magnuson,
United States Senate,
Washington, D. C.

Re: MOORE, Wm. G.
XC-3 776 399

MY DEAR SENATOR MAGNUSON:

Further reference is made to your letter of July 30, 1945, transmitting an inquiry addressed to you by Mr. Cal Butterworth, 300 East Pine Street, Seattle, Washington, concerning the disposition of the National Service Life Insurance of the veteran named in the caption. Your constituent's letter is returned at this time, a copy having been made for the files. It is noted that you request any comments as to the correctness of Mr. Butterworth's position, namely that the National Service Life Insurance should be regarded as community property and therefore should be subject to the

State statutes of Washington with reference thereto.

The insured in this case gave his home address as Centralia, Washington; made application on March 16, 1944, for $10,000 National Service Life Insurance and designated as his principal beneficiary his mother, Edith Ivy Froberg. An award of the National Service Life Insurance has been made and approved in favor of the designated beneficiary of record, namely the insured's mother. There is evidence that the insured was survived by a widow and by two children, the marriage having taken place in the State of Oregon in 1935. The widow, Mrs. Vivian F. Moore, also of Centralia, Washington, in the opinion of your constituent is entitled to a share of the National Service Life Insurance although she was not the designated beneficiary, but because of the provisions of the State statutes as to community property.

Your constituent refers to the case of the Occidental Life Insurance Company vs. Powers, 192 Wash. 475; 74 Pac. (2d) 27, and to another case of the same tenor, King vs. Prudential Insurance Company, 13 Wash. (2d) 414, 125 Pac. (2d) 282. In the Occidental Life Insurance case and in the other case cited, commercial insurance only was involved and the court in those two cases held that the commercial insurance was to be regarded as community property.

The situation with reference to insurance issued by the United States Government upon the lives of servicemen under the War Risk Insurance Act 1917, as amended, the World War Veterans Act 1924 as amended and the National Service Life

Insurance Act 1940 as amended presents a different situation from that developed by a policy of commercial life insurance. The Bureau of War Risk Insurance and its successors, the Veterans Bureau, and the Veterans Administration in dealing with yearly renewable term insurance issued under the War Risk Insurance Act as amended, and the World War Veterans Act 1924 as amended has uniformly held that such insurance which came to being by virtue of the Federal Statutes does not constitute community property except possibly where in the distribution of that insurance after the death of a designated beneficiary or distributee before the contract had been fully paid, the remaining installments or the present value thereof might pass to the insured's estate pursuant to the statutes as amended. In such a contingency and in such a contingency only, where payment was to be made to the insured's estate has the Veterans Administration held, if the insured was a resident of a State recognizing the community property theory that such remaining insurance once paid to the estate then became subject in its further distribution to the local statutes so that in a jurisdiction applying the community property rule, the insurance might so be regarded.

With reference to the National Service Life Insurance here involved there is not only a limited class of beneficiaries (Section 602(g), Public 801, 76th Congress as amended) but the statute also provides that the insured shall at all times have the right to change the beneficiary or beneficiaries without the latter's consent, but only within the classes provided, that is, widow, widower, child, including

a stepchild or illegitimate child if designated, parent, brother or sister.

Further, the National Service Life Insurance Act also provides in Section 602(i) that the right of any beneficiary to payment of any installments is conditioned upon his or her being alive to receive such payments and that no person shall have a vested right to any installment or installments of such insurance and any installment not paid to a beneficiary during the beneficiary's lifetime shall be paid to the beneficiary or beneficiaries within the permitted class next entitled. The same Act (subsection 602(j)) provides that no installments of such insurance shall be paid to the heirs or legal representatives of the insured or of any beneficiary.

It seems to this Office that under the terms of the Federal Statute creating National Service Life Insurance, such insurance was not intended to be community property and is not so to be classified; the insured at all times has the right to change the beneficiary within the classes permitted, without the consent of the prior beneficiary and no beneficiary has a vested right in said National Service Life Insurance. Further, as pointed out the National Service Life Insurance does not become a part of the estate of the insured or of any beneficiary.

May I ask your attention to the fact that the National Service Life Insurance Act, the basic statute here involved, was an exercise of Congressional power in connection with the National Defense and therefore would be the paramount law of the land. The United States Supreme Court in Hines *v.* Lowrey, 305 U. S. 85, 83 Law Ed. 56 considered Section 500 of the World War Veterans Act (dealing with the statutory limitation upon attorney's fees

of $10.00) and held that a State court was precluded from allowing a greater sum than that to an attorney retained by the committee of an insane veteran to prosecute the latter's claim under a War Risk Insurance contract. The court said:

> "Congressional enactments in pursuance of constitutional authority are the supreme law of the land. Section 500 is a valid exercise of congressional power. 'The laws of the United States are laws in the several states, and just as much binding on the citizens and courts thereof as the state laws are.'"

There is a further distinction between National Service Life Insurance and the commercial policies involved in the cases supra. Both are contracts, to be sure, but the benefits of the Government policies are not paid for in full by the insured—instead the Government assumes the cost due to the War hazard and that of administration. As said by the late Justice Holmes for the Court in White *vs.* U. S. 270 U. S. 175; 70 Law Ed. 530:

> "The insurance was a contract, to be sure, for which a premium was paid, but it was not one entered into by the United States for gain. All soldiers were given a right to it, and the relation of the government to them, if not paternal, was at least avuncular. It was a relation of benevolence established by the government at considerable cost to itself, for the soldier's good."

It seems clear that this is a valid exercise of governmental power under the Constitution and to the

extent that the Federal legislation occupies this field, State powers must yield.

A copy of this letter is enclosed.

Very truly yours,

(s) EDWARD E. ODOM,
Solicitor.

JW By:aph

Copy

Enclosure No. 2

Copy of letter from Cleary and Zeff

Law Offices of
CLEARY AND ZEFF
Leslie A. Cleary, William Zeff
Court House, Suite 409 Telephone 1381
Modesto, California

December 26, 1945.

XC-6 035 603

Veterans Administration,
Division of Insurance,
Washington 25, D. C.

GENTLEMEN:

Re: Major Leonard O. Wissner, M.C. O-501799

I am writing you on behalf of Margaret V. Wissner, surviving widow of the above named member of the United States army.

Mrs. Wissner was advised by the authorities that her husband, Major Wissner, died in Burma in an army hospital on November 11, 1945.

We do not have the major's government insurance policy in our possession, but it is our desire to make claim to any moneys due under the same on behalf of the widow.

It is possible that Major Wissner may have named someone else as beneficiary under this policy, but inasmuch as the major was a resident of the State of California and all of his earnings were community property, the widow's community interest in the policy could not be given away by him simply by naming someone else as beneficiary.

We call this situation to your attention as we will ask you to protect the interest of the widow in making any settlement under any policy of government insurance which Major Wissner may have had at the time of his death.

Should there be any question relative to the law of this state concerning the interest of the widow in a policy of insurance paid for with community funds, regardless of who may be named beneficiary, we will be pleased to furnish you with the necessary legal authorities upon request.

Should there be any forms that are to be completed and executed by Major Wissner's widow in support of her claim, please advise us and forward such forms to us.

Very truly yours,

CLEARY AND ZEFF,
By (s) Leslie A. Cleary.

LAC:BT

Copy

Enclosure No. 3

Copy of letter to Cleary and Zeff

January 19, 1946.

FCDA

Wissner, Leonard O., XC6 035 603

Messrs. Cleary and Zeff
Attorneys At Law,
Court House Suite 409,
Modesto, California.

Attention: Leslie A. Cleary

DEAR SIR:

Receipt is acknowledged of your letter dated December 26, 1945, making inquiry relative to the National Service Life Insurance of the above-named serviceman.

You are advised that the granting of National Service Life Insurance to servicemen is governed by an act of Congress, known as the National Service Life Insurance Act of 1940, as amended, (Public Law 801—76th Congress), which supersedes any existing law of any state of the United States with respect thereto.

The National Service Life Insurance Act provides that the insured may designate any person or persons within the permitted class of beneficiaries: Widow or widower, child, (including adopted child, step-child or illegitimate child), parent, (including parent through adoption and persons who stood in

the place of a parent to the insured), and brother or sister, (including those of the half blood), as beneficiaries of his insurance.

In view of the foregoing, the insured has a right to designate any beneficiary or beneficiaries of his insurance, and such designation is made by the insured over his signature and filed in this office.

Accordingly, the above-named serviceman has designated Louise Wissner, mother, as the principal beneficiary of his insurance and Leandus H. Wissner, father, as the contingent beneficiary for the full amount of insurance.

It is, therefore, evident from the above that the designation of the insured's mother as the principal beneficiary of his insurance was not made by him in violation of any law in existence in the State of California with respect to community property, and that Margaret V. Wissner, the widow of the serviceman, has no present interest in this insurance.

Very truly yours,

F. B. SIMMS,
Chief, Life Insurance Claims Division.

SS:mc

☆ U. S. GOVERNMENT PRINTING OFFICE 1945 [illegible]